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makes much of the economic loss which the Pacific Coast states have suffered from refusal to avail themselves of the cheap and abundant labor they could obtain in China. The economic gain would cost too high a price if it involved the introduction of a large and permanently alien element into our national life. But as a matter of fact, the gain would be such only from the standpoint of capitalistic exploitation. If the scarcity of labor, as is now becoming probable, shall help to break up the large agricultural holdings which have been the curse of California, it certainly will prove a blessing.

The tables accompanying the text have been rather carelessly prepared. In several of them there are confusing errors in the figures; it is not apparent why the percentages are left out in many places on p. 503; and the type on p. 504 must have been set by the youngest apprentice.

ERNEST BRUNCKEN.

*The Conflict over Judicial Powers in the United States to 1870.*

By CHARLES GROVE HAINES. Columbia University Studies in History, Economics and Public Law. (New York: Longmans, Green and Company. 1909. Pp. 180.)

The author of this monograph aims to give a history of the struggle for supremacy of the federal judiciary on the one hand and the federal or state executive or legislature on the other. He carries the subject down to 1870, which is well chosen as marking the division between the old period of slavery and states rights and the new period of industrial development. The discussion includes as its most important topic an account of the development of the theory and practice of the federal courts in the determination of the constitutionality of federal and state laws.

Beginning with the English theory of legislative supremacy the work first discusses the causes operating toward the dominance of the judiciary in America. While the constitution was silent upon this question yet the general opinion seems to have been favorable to the right of the courts to set aside the act of the legislature if contrary to the constitution. This opinion and the recognition of such a judicial power by the twenty-fifth section of the judiciary act of 1789 foreshadowed the decision in *Marbury against Madison*.

Following the establishment by this case of the theory of judicial supremacy the book outlines the extension of the power of the federal

courts under Marshall, with occasional resistance by the federal executive or the states; the restrictive period of the Chief-Justiceship of Taney up to the Dred Scott decision; and the period of conflict resulting from the acute stages of the slavery question, the civil war and reconstruction. It thus forms a basis for a further consideration of the great development of judicial power since 1870.

The treatment is historical throughout. Statements of the attitude of the various parties to the controversy at its different stages are given impartially, decision of the courts are analyzed without bias, with the evident intention of avoiding any discussion as to the merits of the American doctrine of judicial power. So successful has the author been in this that his own opinion upon this question does not appear at any point.

While the work is a careful bringing together and analysis of the more important data on the subject rather than a discovery of new materials or an advancing of new theories, yet it is not only thoroughly well done but it is also well worth doing. It more than fulfills the modest promise in the preface where it is characterized as "a preliminary essay." Whether it be followed by a more complete discussion of the period now covered, or a treatment of the important development of federal judicial power since 1870, the sequel will be awaited with interest.

JOHN B. SANBORN.